

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSMONDO SMITH,

Petitioner,

-against-

CHRISTOPHER MILLER, Superintendent,

Respondent.

20-CV-9708 (CM)

20-CV-10351 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

On November 17, 2020, Petitioner filed a notice of motion expressing his intention to file a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 to challenge his January 12, 2016 Bronx County judgment of conviction. The Clerk of Court opened the motion as a new civil action and assigned it docket number 20-CV-9708. Two days later, on November 19, 2020, Petitioner filed a letter in that case, advising the Court that the copy machine in Great Meadow Correctional Facility has been broken for three weeks, and he therefore requested an extension of time to file his § 2254 petition.¹ On December 8, 2020, Petitioner filed a signed petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 challenging his January 12, 2016 Bronx County judgment of conviction. The Clerk of Court opened this petition as a new civil action under docket number 20-CV-10351.

Because Petitioner's November 17, 2020, and December 8, 2020 filings seek to challenge the same conviction, the Court directs the Clerk of Court to: (1) administratively close the action under docket number 20-CV-10351; and (2) file the § 2254 petition, which is currently docketed as ECF No. 1 in the action under docket number 20-CV-10351, as an amended petition in the

¹ By order dated December 9, 2020, the Court directed Petitioner to pay the \$5.00 filing fee required to file a writ of *habeas corpus* under § 2254, or to submit a completed and signed request to proceed *in forma pauperis* (IFP) to proceed without prepayment of fee. *See* 28 U.S.C. §§ 1914, 1915.

action under docket number 20-CV-9708. Thereafter, the claims asserted in Petitioner's December 8, 2020 petition will proceed under docket number 20-CV-9708. Petitioner is directed to include docket number 20-CV-9708 on all papers that he submits in support of his petition.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket.

The Clerk of Court is further directed to: (1) administratively close the action under docket number 20-CV-10351; and (2) file the § 2254 petition, which is currently docketed as ECF No. 1 in the action under docket number 20-CV-10351, as an amended petition in the action under docket number 20-CV-9708.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 10, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge